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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,430	08/02/2007	Franz Konrad	KONRAD-13 PCT	4881
25889	7590	06/21/2010		
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER KIRSCH, ANDREW THOMAS	
			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			06/21/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/586,430

**Applicant(s)**

KONRAD, FRANZ

**Examiner**

ANDREW T. KIRSCH

**Art Unit**

3781

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-108 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 9 and 18-107 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 10-17 and 108 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

1. The amendment filed 3/24/2010 has been entered.

***Claim Objections***

2. The objections to the claims have been removed.
3. Claim 17 is objected to because its current status is labeled as "Currently Amended" however the claim does not contain any amended language.

***Specification***

4. The abstract of the disclosure is objected to because it contains the self evident clause "The invention relates to...". Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 112***

5. The rejection under the first paragraph of 35 U.S.C. 112 has been removed.
6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1 and 108 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Claims 1 and 108 recites the limitations "the relative movement" on pages 3 and
7. There is insufficient antecedent basis for these limitations in the claims.
9. Claim 1 also recites the limitation "the cap which extends around an open end face of the housing container by means of its open end region." It is unclear whether the "its" refers to the cap or the housing container as having the open end region. Also,

if the cap is to have the open end region, there is a lack of antecedent basis for the limitation in claim 1.

***Claim Rejections - 35 USC § 103***

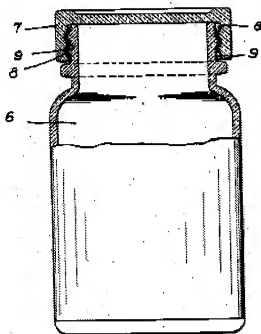
10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

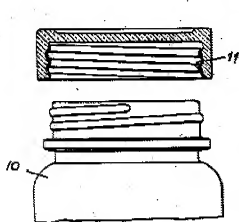
11. Claims 1-5, 8, 10-13, 16-17 and 108 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,048,705 (Kucera hereinafter) in view of U.S. Patent No. 2,187,394 (Glocker hereinafter).

12. In re claims 1 and 108, with reference to Figs. 1-4 below, Kucera discloses a product capable of being formed by: Method of assembling a container system for blood, body fluids, tissue parts, or tissue cultures, which container system has a closure device comprising a cap (13) and a sealing device (14) made from a pierceable, highly elastic and self closing material ("rubber", column 2, lines 24-25) which is inserted before said cap is screwed on, wherein said sealing surface extends across an open face of the housing container (since the face is ring shaped, the ring shaped sealing device covers the entire face, and is said to extend across the face), and a substantially cylindrical housing container (10, 12) enclosing an interior with an open end (see fig. 4), whereby a cap casing (see fig. 4) of the cap (13) extends around an open end face of

the housing container (10, 12) by means of the cap (13) which extends around an open end face of the housing container (10, 12) by means of its open end region directed towards the housing container (10, 12) during the assembly process wherein the method comprises; placing a thread arrangement with co-operating threads (column 1, lines 37-40) between the cap and housing container; and creating a relative rotating or pivoting movement (threads imply the need for rotating movement) which is effected about a common longitudinal axis in order to assemble the closure device (13) and the housing container (10, 12), and one of the components to be assembled is respectively supported on a thrust bearing of the assembly unit as to be rotatable about its longitudinal axis for the joining operations, applying a pressing force essentially in a longitudinal axis wherein the force is applied to at least one of the components (the lid 13) to be assembled by the assembly unit, converting the pressing force intended to generate the relative movement into the/a relative rotating or pivoting movement about the common longitudinal axis by the co-operating threads (the threads function as ramps to convert the force into rotation); engaging the threads of the thread arrangement with one another across the entire length of the screwing path until the fully screwed in position is reached during the relative rotating or pivoting movement. (Note that in its normal use, the jar is capable of being rotated relative to a stationary lid to perform the screwing attachment, in which an axial pressing force will be imparted on the jar to start the engagement of the threads).

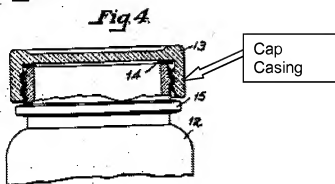


*Fig. 1.*



*Fig. 3.*

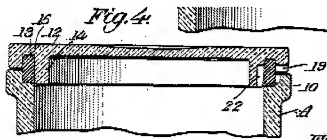
*Fig. 2.*



13. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed ("for body fluids, tissue parts or tissue cultures ") does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

14. Kucera fails to disclose inserting a sealing surface of the sealing device in the open region of the interior of the housing container, and simultaneously assembly several closure devices with the housing containers to be joined to form the container system in a common assembly unit and prior to joining the components to be assembled the interiors of the housing containers are sealed off from the external atmosphere and are reduced to a pressure lower than the external ambient pressure.

15. However, with reference to Fig. 4 below, Glocker discloses inserting a sealing surface (lower surface of ring 15) of a sealing device (15) in the open region of the interior of the housing container (A), the container having an internal pressure reduced from the external ambient pressure ("breaking the vacuum" page 2, column 1, lines 40-44).



16. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the sealing device of Kucera to have a surface inserted into the open end of a container as taught by Glocker for the purposes of effecting a fluid tight seal on a container in which a vacuum pressure differential is maintained (page 2, column 1, lines 40-44).

17. Note that rubber is considered self-closing as Glocker discloses a rubber ring which enables the self-sealing of the container (page 1, column 1, lines 35-36).

18. In accordance to MPEP 2113, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Please note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e the container system, does not depend on its method of production, i.e. simultaneously with several containers in an assembly unit with a thrust bearing. In re Thorpe, 227 USPQ 964, 966 (Federal Circuit 1985).

19. In re claim 2, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention including wherein the pressing force is applied to the cap (13) of the closure device.

20. In re claim 3, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention including wherein when the pressing force is being applied, the cap (13) is held stationary relative to the housing container (12) and the housing container (12) is displaced in the relative rotating or pivoting movement (due to the helical threads).

21. In re claim 4, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention including wherein the housing container (12) is held stationary relative to the cap (13) when the pressing force is being applied (although not explicitly disclosed, the cap and container of Kucera are capable of being attached by the claimed method).

22. In re claim 5, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention except wherein the relative rotating or pivoting



movement is caused by the pressing force (F) with an intensity of between 10N and 50N.

23. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have supplied the specified force, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Please note that in the instant application, page 6, second-to-last paragraph applicant has not disclosed any criticality for the claimed limitations.

24. In re claim 8, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention including wherein before applying the pressing force (F), one of the components to be assembled is pre-positioned relative to the other one of the components to be assembled by a free rotation about the common longitudinal axis (in an instance where rotation is required before the threads catch).

25. In re claim 10, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention further comprising the step of applying a coating (11) on at least one component (13) forming the container system (column 1, lines 41-46).

26. In re claim 11, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention including wherein the coating (11) is applied to at least certain areas in the region of a coupling mechanism (threads) between the cap (13) and the housing container (12).

27. In re claim 12, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention including wherein the coating is applied to the part of the thread arrangement disposed on the housing container (12) (column 1, lines 44-48).
28. In re claim 13, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention including wherein the coating is applied to the part of the thread arrangement disposed on the cap (13) (column 1, lines 37-40).
29. In re claim 16, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention including wherein the coating (11) is applied to the respective coating region continuously or all over.
30. In re claim 17, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention including wherein the coating (11) reduces friction between the components to be assembled in readiness for the joining operation.
31. Note that according to [www.engineershandbook.com](http://www.engineershandbook.com), the coefficient for glass on glass friction is between 0.9 and 1.0, and between 0.5 and 0.7 for glass on metal friction. Therefore, by coating the threads of with metal as taught by Kucera, the friction is reduced.
32. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kucera in view of Glocker as applied to claim 10 above, and further in view of U.S. Patent No. 6,006,930 (Dreyer hereinafter).
33. In re claims 14 and 15, with reference to the Figs. above, Kucera in view of Glocker discloses the claimed invention except wherein the coating is applied to a

sealing surface of a stopper of the sealing device directed towards the housing container, and wherein the coating is applied to an internal surface of the housing container facing the sealing surface of the stopper of the sealing device.

34. However, Dreyer discloses a stopper (23) with a sealing surface (outer diameter surface).

35. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the stopper of Dreyer with the container of Dreyer and to have applied the coating of Kucera to the stopper sealing surface as well as the internal surface of the container which faces the stopper, as Kucera disclosed the concept of applying the coating to sliding surfaces of the closure which reduces friction.

### ***Response to Arguments***

36. Applicant's arguments filed 3/24/2010 have been fully considered but they are not persuasive. See rejection of the claims above for the teachings of the argued limitations.

### ***Conclusion***

37. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW T. KIRSCH whose telephone number is (571)270-5723. The examiner can normally be reached on M-F, 8am-5pm, off alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T. Kirsch/

Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781